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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-91319; File No. SR-NYSEArca-2021-16]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the NYSE Arca Equities Fees and Charges

March 12, 2021.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that March 1, 2021, NYSE Arca, Inc. ("NYSE Arca" or the "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Equities Fees and Charges ("Fee Schedule") to (1) replace current Tape C Tier 1 and Tape C Tier 2 pricing tiers with four new pricing tiers, Tape C Tiers 1 - 4; (2) adopt an alternative requirement to qualify for the Tier 1 pricing tier; (3) modify the requirement associated with the Step Up Tier pricing tier; and (4) eliminate the Cross-Asset Tier 1 pricing tier. The Exchange proposes to implement the fee changes effective March 1, 2021. The proposed rule change is available on the Exchange's website at www.nyse.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places

1 15 U.S.C. 78s(b)(1).

2 17 CFR 240.19b-4.

specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to (1) replace current Tape C Tier 1 and Tape C Tier 2 pricing tiers with four new pricing tiers, Tape C Tiers 1 - 4; (2) adopt an alternative requirement to qualify for the Tier 1 pricing tier; (3) modify the requirement associated with the Step Up Tier pricing tier; and (4) eliminate the Cross-Asset Tier 1 pricing tier.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing orders by offering further incentives for ETP Holders[3] to send additional liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective March 1, 2021.

Background

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[4]

While Regulation NMS has enhanced competition, it has also fostered a "fragmented"

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3 All references to ETP Holders in connection with this proposed fee change include Market Makers.

4 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) ("Regulation NMS").

market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that "such competition can lead to the fragmentation of order flow in that stock."[5] Indeed, equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of equity order flow. More specifically, the Exchange currently has less than 10% market share of executed volume of equities trading.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. With respect to non-marketable order flow that would provide liquidity on an Exchange against which market makers can quote, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders that would provide liquidity on an exchange.

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5 See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

6 See Cboe U.S Equities Market Volume Summary, available at https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.

7 *See* FINRA ATS Transparency Data, *available at* https://otctransparency.finra.org/otctransparency/AtsIssueData. A list of alternative trading systems registered with the Commission is *available at* https://www.sec.gov/foia/docs/atslist.htm.

8 See Cboe Global Markets U.S. Equities Market Volume Summary, available at http://markets.cboe.com/us/equities/market_share/.

9 See id.

Proposed Rule Change

Tape C Tiers 1 - 4

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders an opportunity to receive enhanced rebates by executing more of their orders in Tape C securities on the Exchange.

In this competitive environment, the Exchange has already established Tape C Tiers 1 and 2, which are designed to encourage ETP Holders that provide liquidity in Tape C securities to increase that order flow, which would benefit all ETP Holders by providing greater execution opportunities on the Exchange. The Exchange currently has multiple levels of credits for such orders that are based on the amount of volume that ETP Holders send to the Exchange. Specifically, under Tape C Tier 1,[10] ETP Holders receive a credit of $0.0002 per share for orders that provide liquidity. This credit is in addition to the ETP Holder's tiered or basic rate credit(s) and is capped at $0.0031 per share. Additionally, under Tape C Tier 2,[11] ETP Holders also receive a credit of $0.0002 per share for orders that provide liquidity. This credit is in addition of the ETP Holder's tiered or basic rate credit(s) and is capped at $0.0033 per share.

In order to provide an incentive for ETP Holders to direct increased liquidity in Tape C securities, the Exchange proposes to replace the current Tape C pricing tiers with four new Tape C pricing tiers where the credits increase in the various tiers based on increased levels of volume directed to the Exchange.

Specifically, under proposed new Tape C Tier 4, ETP Holders that add liquidity to the Exchange in Tape C securities with a per share price of $1.00 or more and that have at least

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10 To qualify for Tape C Tier 1, an ETP Holder on a daily basis, measured monthly, is required to execute providing volume in Tape C securities that is equal to at least 0.10% of the US Tape C CADV over the ETP Holder's Q4 2016 providing volume taken as a percentage of Tape C CADV.

11 To qualify for Tape C Tier 2, an ETP Holder on a daily basis, measured monthly, is required to execute providing volume in Tape C securities that is equal to at least 0.20% of the US Tape C CADV over the ETP Holder's Q4 2016 providing volume taken as a percentage of Tape C CADV.

0.15% Tape C Adding ADV as a percentage of US CADV,[12] or 20 million shares of Tape C Adding ADV would receive a credit of $0.0029 per share. Under proposed new Tape C Tier 3, ETP Holders that have at least 0.25% Tape C Adding ADV as a percentage of US CADV would receive a credit of $0.0031 per share. Under proposed new Tape C Tier 2, ETP Holders that have at least 0.35% Tape C Adding ADV of US CADV would receive a credit of $0.0033 per share. Finally, under proposed new Tape C Tier 1, ETP Holders that have at least 0.40% Tape C Adding ADV of US CADV would receive a credit of $0.0034 per share and would pay a fee of $0.0029 per share for removing liquidity.

The Exchange proposes to replace the current Tape C pricing tiers because the pricing tiers have been underutilized by ETP Holders. The Exchange believes the proposed new Tape C pricing tiers will encourage ETP Holders to increase their trading activity on the Exchange and direct more of their liquidity providing orders in Tape C securities to the Exchange.

Tier 1

Currently, under Tier 1, ETP Holders that provide liquidity an average daily share volume (ADV) per month of 0.70% or more of US CADV are provided a credit of $0.0031 per share for orders that provide liquidity in Tape A securities, a credit of $0.0023 per share for orders that provide liquidity in Tape B securities,[13] and a credit of $0.0032 per share for orders that provide liquidity in Tape C securities.[14]

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12 US CADV means the United States Consolidated Average Daily Volume for transactions reported to the Consolidated Tape, excluding odd lots through January 31, 2014 (except for purposes of Lead Market Maker pricing), and excludes volume on days when the market closes early and on the date of the annual reconstitution of the Russell Investments Indexes. Transactions that are not reported to the Consolidated Tape are not included in US CADV. See Fee Schedule, footnote 3.

13 ETP Holders can receive an additional credit if they are affiliated with Lead Market Makers ("LMMs") that provide displayed liquidity based on the number of Less Active ETP Securities in which the LMM is registered as an LMM. See Fee Schedule, LMM Transaction Fees and Credits.

14 Under Tier 1, ETP Holders are also charged a fee of $0.0010 per share for Market, Market-On-Close, Limit-On Close, and Auction-Only Orders in Tape A, Tape B and Tape C securities executed in a Closing Auction.

The Exchange proposes to modify the requirements to qualify for Tier 1 by adopting an alternative qualification basis for the Tier 1 fees and credits. As proposed, ETP Holders would qualify for the current fees and credits by providing liquidity an ADV of 0.70% or more of US CADV or at least 84 million shares of providing ADV. The Exchange does not propose any changes to the amount of fees charged and credits provided under Tier 1.

The Exchange believes that introducing alternative criteria for ETP Holders to qualify for Tier 1 will allow greater number of ETP Holders to potentially qualify for the tier, and will incentivize more ETP Holders to route their liquidity-providing order flow to the Exchange in order to qualify for the tier. This in turn would support the quality of price discovery on the Exchange and provide additional price improvement opportunities for incoming orders. The Exchange believes that by correlating the amount of the fee to the level of orders sent by an ETP Holder that add liquidity, the Exchange's fee structure would incentivize ETP Holders to submit more orders that add liquidity to the Exchange, thereby increasing the potential for price improvement to incoming marketable orders submitted to the Exchange.

The Exchange also proposes the non-substantive change of deleting "share" from "average daily share volume" in Tier 1 and adopting "ADV" as an abbreviation for average daily volume.

As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional ETP Holders could qualify for the tiered rate under the new qualification criteria if they choose to direct order flow to, and increase quoting on, the Exchange. However, without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional ETP Holders directing orders to the Exchange in order to qualify for the Tier 1 fees and credits.

Step Up Tier

Under the Step Up Tier, an ETP Holder is eligible to earn credits payable under the tier if the ETP Holder directly executes providing average daily volume (ADV) per month of 0.50% or more, but less than 0.70%, of US CADV and directly executes providing ADV that is an increase of no less than 0.10% of US CADV for that month over the ETP Holder's providing ADV in Q1 2018. ETP Holders that meet this requirement are eligible to earn the following credit:

- $0.0030 per share for orders that provide displayed liquidity in Tape A securities;
- $0.0023 per share for orders that provide displayed liquidity in Tape B securities; and
- $0.0031 per share for orders that provide displayed liquidity in Tape C securities.

The Exchange proposes to modify the volume requirement applicable to ETP Holders to qualify for the Step Up Tier by lowering the percentage threshold that an ETP Holder must meet, from 0.50% or more, but less than 0.70%, of US CADV to 0.45% or more, but less than 0.70%, of US CADV.

The Exchange believes the amended criteria would incentivize order flow providers to send a greater number of liquidity-providing orders to the Exchange to qualify for the pricing tier. As described above, ETP Holders with liquidity-providing orders have a choice of where to send those orders. The Exchange believes that, if it lowers the requirement to qualify for the credit, more ETP Holders will choose to route their liquidity-providing orders to the Exchange.

As noted above, the Exchange operates in a competitive environment, particularly as relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Based on the profile of liquidity-adding firms generally, the Exchange believes that additional ETP Holders could qualify for the Step Up Tier credits under the revised qualification criteria if they choose to direct order flow to, and increase quoting on, the

Exchange. However, without having a view of ETP Holders' activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional ETP Holders directing orders to the Exchange in order to qualify for the Step Up Tier credits. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity but additional liquidity-providing orders would benefit all market participants because it would provide greater execution opportunities on the Exchange.

The Exchange is not proposing to amend any of the credits payable under the Step Up Tier.

Cross-Asset Tier 1

The Exchange proposes to eliminate the Cross-Asset Tier 1 pricing tier.

Under Cross-Asset Tier 1, ETP Holders can receive a credit of $0.0031 per share in Tape A securities, a credit of $0.0030 per share and a fee of $0.0029 per share in Tape B securities, and a credit of $0.0032 per share in Tape C securities if such ETP Holder provides liquidity of 0.30% or more of the US CADV per month, and is affiliated with an OTP Holder or OTP Firm that provides an ADV of electronic posted Customer executions in all issues on NYSE Arca Options (excluding mini options) of at least 0.55% of total Customer equity and ETF option ADV as reported by The Options Clearing Corporation ("OCC").

The Exchange proposes to eliminate the Cross-Asset Tier 1 pricing tier and remove it from the Fee Schedule because the pricing tier has been underutilized by ETP Holders. The Exchange has observed that historically, few ETP Holders have qualified for the fees and credits under the Cross-Asset Tier 1 pricing tier. The pricing tier has not served to meaningfully increase activity on the Exchange or improve the quality of the market. Since January 2020, no ETP Holder has qualified under the pricing tier.

With the proposed elimination of Cross-Asset Tier 1, the Exchange proposes to rename current Cross-Asset Tier 2 as Cross-Asset Tier and replace reference to Cross-Asset Tier 2 with

Cross-Asset Tier in the Fee Schedule. Additionally, the Exchange proposes to delete the following rule text under current Cross-Asset Tier 2 pricing tier: "ETP Holders and Market Makers that qualify for this incremental Tape C credit shall not qualify for any fees and credits under Tape C Tier 1 and Tape C Tier 2." With the proposed deletion of current Tape C Tier 1 and Tape C Tier 2, the above rule text would no longer be applicable. For the same reason, the Exchange also proposes to delete the following rule text under current Step Up Tier 4: "ETP Holders and Market Makers that qualify for Step Up Tier 4 shall not receive any additional incremental Tape C Tier credits for providing displayed liquidity."

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[16] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Fee Change is Reasonable

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies."[17]

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15 15 U.S.C. 78f(b).

16 15 U.S.C. 78f(b)(4) and (5).

17 See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to [sic] reduce use of certain categories of products, in response to fee changes. With respect to non-marketable order [sic] which provide liquidity on an Exchange, ETP Holders can choose from any one of the 16 currently operating registered exchanges to route such order flow. Accordingly, competitive forces reasonably constrain exchange transaction fees that relate to orders that would provide displayed liquidity on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

Tape C Tiers 1 - 4

The Exchange believes the proposal to eliminate current Tape C Tier 1 and Tier 2 is reasonable because the Exchange is not required to maintain these tiers. Moreover, ETP Holders still have a number of other opportunities and a variety of ways to receive enhanced rebates for liquidity adding orders, including via the proposed new Tape C Tiers 1 - 4. The Exchange notes that the proposed change does not preclude any ETP Holder from achieving the proposed new Tape C Tiers 1 - 4 to qualify for the rebates or other available rebates under other pricing tiers (i.e., Tier 2, Step Up Tier and Step Up Tier 4). Additionally, ETP Holders are still entitled to a rebate for their liquidity adding orders (i.e., the standard rebate). Further, as noted above, all ETP Holders are eligible to qualify for the proposed new Tape C Tiers 1 - 4 should they satisfy the respective criteria.

The Exchange believes that the proposal to adopt Tape C Tiers 1 - 4 is reasonable because the tiers continue to provide an opportunity for ETP Holders to receive enhanced rebates based on the level of their trading activity in Tape C securities. The Exchange notes that relative volume-based incentives and discounts have been widely adopted by exchanges, including the Exchange, and are reasonable, equitable and non-discriminatory because they are open to all ETP Holders on an equal basis and provide additional benefits or discounts that are reasonably related to the value to an exchange's market quality and associated higher levels of market activity. Additionally, as noted above, the Exchange operates in highly competitive market. The Exchange is only one of 16 equity venues to which market participants may direct their order flow, and it represents a small percentage of the overall market. Competing equity exchanges offer similar tiered pricing structures to that of the Exchange, including schedules of rebates and fees that apply based upon members achieving certain volume and/or growth thresholds. These competing pricing schedules, moreover, are presently comparable to those that the Exchange provides, including the pricing of comparable tiers.[18]

Moreover, the Exchange believes the proposed new pricing tiers continue to be a reasonable means to encourage ETP Holders to increase their liquidity on the Exchange. Increased liquidity benefits all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection.

Tier 1

The Exchange believes that the proposed new additional threshold for qualifying for Tier 1 is reasonable because it is designed to encourage increased trading activity on the Exchange. The Exchange believes it is reasonable to require ETP Holders to meet the applicable volume threshold to qualify for the Tier 1 credits. Further, the proposed change is reasonable as it would allow ETP Holders an additional method to qualify for the credits payable under the pricing tier if ETP Holders are unable to meet the existing requirement. The Exchange believes that the proposal represents a reasonable effort to promote price improvement and enhanced order execution opportunities for ETP Holders. All ETP Holders would benefit from the greater amounts of liquidity on the Exchange, which would represent a wider range of execution

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18 See e.g., Cboe BZX U.S. Equities Exchange ("BZX") Fee Schedule, Footnote 1, Add/Remove Volume Tiers, which provide enhanced rebates between $0.0025 and $0.0031 per share for displayed orders where BZX members meet certain volume thresholds.

opportunities.

The Exchange further believes that removing an extraneous phrase from Tier 1 and adopting ADV as an abbreviation for "average daily volume" is reasonable as it would add clarity to the Fee Schedule.

Step Up Tier

The Exchange believes the proposed change to lower the volume requirement under the Step Up Tier is reasonable because it would allow ETP Holders to more easily meet the requirement of the pricing tier to receive per share credits payable under the pricing tier, thereby encouraging the submission of additional liquidity to a national securities exchange. Submission of additional liquidity to the Exchange would promote price discovery and transparency and enhance order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed lower volume requirement is also reasonable as it would provide an additional incentive for ETP Holders to qualify for this established tier and direct their order flow to the Exchange and provide meaningful added levels of displayed liquidity, thereby contributing to the depth and market quality on the Exchange.

On the backdrop of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors.

Cross-Asset Tier 1

The Exchange believes that the proposed rule change to eliminate the Cross-Asset Tier 1 is reasonable because the pricing tier has been underutilized and has not incentivized ETP Holders to bring liquidity and increase trading on the Exchange. Since January 2020, no ETP Holder has availed itself to the pricing tier that the Exchange is proposing to eliminate. The Exchange does not anticipate any ETP Holder in the near future to qualify for the pricing tier that is the subject of this proposed rule change. The Exchange believes it is reasonable to eliminate requirements and credits, and even an entire pricing tier when such incentives become underutilized. The Exchange believes eliminating underutilized incentive programs would also simplify the Fee Schedule. The Exchange further believes that removing reference to the pricing tier that the Exchange is proposing to eliminate would also add clarity to the Fee Schedule.

The Proposed Fee Change is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants.

Tape C Tiers 1 - 4

The Exchange believes the proposal to eliminate the current Tape C Tier 1 and Tier 2 pricing tiers is equitable and not unfairly discriminatory because it would equally impact to all ETP Holders (i.e., the tiers won't be available for any ETP Holder).

The Exchange believes that the proposed adoption of Tape C Tiers 1 - 4 represents an equitable allocation of fees and is not unfairly discriminatory because all ETP Holders will be eligible for the proposed new tiers and the corresponding rebates will apply uniformly to all ETP Holders that reach the proposed tier criteria. That is, the proposed tiers are designed as an incentive to any and all ETP Holders interested in meeting the tier criteria to submit additional order flow to the Exchange and each will receive the proposed rebate if a tier criteria is met. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular ETP Holder qualifying for the proposed tiers, the Exchange anticipates a number of ETP Holders meeting, or being reasonably able to meet, the proposed criteria. However, without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder qualifying for the proposed new pricing tiers. The Exchange also notes that the proposed change will not adversely impact any ETP Holder's pricing or their ability to qualify for other rebate tiers. Rather, should an ETP Holder not meet the proposed criteria, the ETP Holder will merely not receive the corresponding rebate.

Tier 1

The Exchange believes the proposed rule change to introduce alternative criteria for ETP Holders to qualify for Tier 1 equitably allocates its fees among its market participants. The Exchange believes the Tier 1 pricing tier is equitable because it is open to all similarly situated ETP Holders on an equal basis and provides a per share credit that is reasonably related to the value of an exchange's market quality associated with higher volumes. The Exchange believes it is equitable to require ETP Holders to meet the applicable volume thresholds to qualify for the Tier 1 credits. Further, the proposed change is also equitable as it would allow ETP Holders an additional method to qualify for the credits payable under the pricing tier if ETP Holders are unable to meet the current requirement. The Exchange believes the proposed change would continue to encourage ETP Holders to both submit additional liquidity to the Exchange and execute orders on the Exchange, thereby contributing to robust levels of liquidity, to the benefit of all market participants.

The Exchange believes that modifying Tier 1 would encourage the submission and removal of additional liquidity from the Exchange, thus enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that would be present on the Exchange, which would provide greater execution opportunities.

The Exchange believes the proposed rule change would also improve market quality for all market participants seeking to remove liquidity on the Exchange and, as a consequence, attract more liquidity to the Exchange, thereby improving market-wide quality. The Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders and other market participants would be eligible for the same basic and tiered rates and would be eligible for the same fees and credits. Moreover, the proposed change is equitable because the revised criteria would apply equally to all similarly situated ETP Holders.

Step Up Tier

The Exchange believes that the proposed modification of the volume threshold to qualify for Step Up Tier represents an equitable allocation of fees. The Exchange is not proposing to adjust the amount of the Step Up Tier credits, which will remain at the current level for all ETP Holders. Rather, the proposal would continue to encourage ETP Holders to send orders that add liquidity to the Exchange, thereby contributing to robust levels of liquidity, which benefits all market participants. The Exchange believes that lowering the requirements would make it easier for liquidity providers to qualify for the Step Up Tier credits. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange. All ETP Holders would benefit from the greater amounts of liquidity that will be present on the Exchange, which would provide greater execution opportunities.

Without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any additional ETP Holders qualifying for this established tier. However, the Exchange believes the proposed lower volume requirement would provide an incentive for ETP Holders to continue to submit liquidity-providing order flow, which would promote price discovery and increase execution opportunities for all ETP Holders. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular ETP Holder qualifying for this established tier, the Exchange anticipates a number of ETP Holders meeting, or being reasonably able to meet, the proposed lower volume threshold. The proposed change will thereby encourage the submission of additional liquidity to a national securities exchange, thus promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders from the substantial amounts of liquidity present on the Exchange, which would benefit all market participants on the Exchange.

The Exchange believes the proposed rule change would improve market quality for all market participants on the Exchange and, as a consequence, attract more liquidity to the Exchange thereby improving market-wide quality. ETP Holders that currently qualify for credits associated with Step Up pricing tiers on the Exchange will continue to receive credits when they provide liquidity to the Exchange. The Exchange believes that recalibrating the requirements for providing liquidity will continue to attract order flow and liquidity to the Exchange for the benefit of investors generally.

Cross-Asset Tier 1

The Exchange believes the proposal to eliminate Cross-Asset Tier 1 is equitably allocated because it would apply to all ETP Holders (i.e., the tier won't be available for any ETP Holder). The Exchange notes that the proposed elimination of the tier does not preclude any ETP Holder from qualifying for the remaining Cross-Asset pricing tier or other pricing tiers.[19]

Specifically, the Exchange believes that the proposal constitutes an equitable allocation of fees because all similarly situated ETP Holders and other market participants would be equally ineligible for the tier proposed for deletion. The Exchange believes that eliminating requirements and credits, and even entire pricing tiers from the Fee Schedule when such incentives become ineffective is equitable and not unfairly discriminatory because the requirements, and credits, and even entire pricing tiers would be eliminated in their entirety and would no longer be available to any ETP Holder.

The Proposed Fee Change is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

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19 See e.g., Fee Schedule, Tier 2, which provides and fees and credits to ETP Holders affiliated with an OTP Holder or OTP Firm that has a market maker account on NYSE Arca Options.

Tape C Tiers 1- 4

The Exchange believes that the proposed change to eliminate Tape C Tier 1 and Tier 2 and adopt Tape C Tiers 1 - 4 is not unfairly discriminatory because all ETP Holders will be impacted equally (i.e., each won't be able to access current Tape C Tier 1 and Tier 2 and will equally be able to qualify for the proposed new Tape C Tiers 1 - 4 rebates if they meet the requirement under the new pricing tiers). The proposed new tiers are designed as an incentive to any and all ETP Holders interested in meeting the tier criteria to submit additional order flow to the Exchange and each will receive the proposed rebate if the tier criteria are met. While the Exchange has no way of knowing whether this proposed rule change would definitively result in any particular ETP Holder qualifying for the proposed tiers, the Exchange anticipates a number of ETP Holders meeting, or being reasonably able to meet, the proposed criteria; however, the proposed tiers are open to any ETP Holder that satisfies each tier's criteria. The Exchange also notes that the proposed change will not adversely impact any ETP Holder's pricing or their ability to qualify for other tiers. Rather, should an ETP Holder not meet the criteria of the proposed new pricing tiers, the ETP Holder will merely not receive the corresponding rebate.

Tier 1

The Exchange believes that the proposed rule change to introduce alternative criteria for ETP Holders to qualify for Tier 1 is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders and all ETP Holders would be subject to the same modified Tier 1. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed changes would not permit unfair discrimination among ETP Holders because the general and tiered rates are available equally to all ETP Holders. As described above, in today's competitive marketplace, order flow providers have a choice of where to direct liquidity-providing order flow, and the Exchange believes there are additional ETP Holders that could qualify for Tier 1 if they chose to direct their order flow to the Exchange.

Step Up Tier

The Exchange believes that the proposed rule change to lower the volume requirement under Step Up Tier 1 is not unfairly discriminatory. The proposal neither targets nor will it have a disparate impact on any particular category of market participant. The proposal does not permit unfair discrimination because the lower threshold would be applied to all similarly situated ETP Holders, who would all be eligible for the same credit on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees.

The Exchange believes it is not unfairly discriminatory to adopt lower volume requirements for ETP Holders to qualify for the Step Up Tier pricing tier as the proposed change would apply on an equal basis to all ETP Holders. Further, the Exchange believes the proposed lower volume requirement would incentivize ETP Holders to execute more of their liquidity-providers orders on the Exchange to qualify for the credits payable under the Step Up Tier. The Exchange also believes that the proposed change is not unfairly discriminatory because it is reasonably related to the value of the Exchange's market quality associated with higher volume. The proposed lower volume requirement would apply equally to all ETP Holders as each would be required to meet the revised criteria.

Cross-Asset Tier 1

The Exchange believes the proposal to eliminate Cross-Asset Tier 1 is not unfairly discriminatory. As noted above, tn [sic] the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value.

Moreover, the proposal neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that the proposal does not permit unfair discrimination because the proposal would be applied to all similarly situated ETP Holders (i.e., the tier won't be available for any ETP Holder). Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by the proposed allocation of fees.

The Exchange believes that eliminating requirements and credits, and even entire pricing tiers from the Fee Schedule when such incentives become ineffective is equitable and not unfairly discriminatory because the requirements, and credits, and even entire pricing tiers would be eliminated in their entirety and would no longer be available to any ETP Holder.

Finally, the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual

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20 15 U.S.C. 78f(b)(8).

stocks for all types of orders, large and small."[21]

Intramarket Competition. The Exchange believes the proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or its competitors. The proposed changes are designed to attract additional order flow to the Exchange. The Exchange believes that the proposed adoption of new pricing tiers and amending criteria of established tiers would incentivize market participants to direct liquidity adding order flow to the Exchange, bringing with it additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefits all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem. The Exchange also does not believe the proposed rule change to eliminate underutilized pricing tiers will impose any burden on intramarket competition because the proposed change would impact all ETP Holders uniformly.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading (i.e., excluding auctions) is currently less than 10%. In such an environment, the Exchange must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

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21 See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[22] of the Act and subparagraph (f)(2) of Rule 19b-4[23] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (http://www.sec.gov/rules/sro.shtml); or

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22 15 U.S.C. 78s(b)(3)(A).

23 17 CFR 240.19b-4(f)(2).

24 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2021-16 on the subject line.

  Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2021-16. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (http://www.sec.gov/rules/sro.shtml). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2021-16, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

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25 17 CFR 200.30-3(a)(12).

J. Matthew DeLesDernier,
Assistant Secretary.

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